

DEL RUPP

IBLA 81-893

Decided August 31, 1981

Appeal from decision of the Arizona State Office, Bureau of Land Management, returning notice of location, map, and filing fee for the Tanis One placer mining claim. 3833 (952).

Affirmed.

1. Administrative Authority: Generally -- Federal Employees and Officers: Authority to Bind Government

Reliance upon erroneous or incomplete information provided by Federal employees does not create any rights not authorized by law.

2. Notice: Generally -- Regulations: Generally -- Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

3. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

#### 4. Mining Claims: Recordation

A copy of the official record of the notice of location for a mining claim located after Oct. 21, 1976, must be delivered to and received by the proper office of the Bureau of Land Management within 90 days after the date of location in order to be timely filed. Depositing a document in the mails does not constitute filing.

APPEARANCES: Del Rupp, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Del Rupp has appealed the decision of the Arizona State Office, Bureau of Land Management (BLM), dated July 17, 1981, returning the notice of location, map, and filing fee submitted for the Tanis One placer mining claim, and declaring the claim abandoned and void for failure to file a copy of the notice of location for the claim with BLM within 90 days after the date of location as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and Departmental regulation 43 CFR 3833.1-2.

Appellant's notice of location for the Tanis One claim, executed on April 16, 1981, indicates that the date of the claim's location was the same date, April 16, 1981. The notice of location was mailed July 15, 1981, from Quincy, California. It was received by BLM on July 17, 1981, the 92nd day after the date of location.

In his statement of reasons, appellant contends he had been informed by BLM personnel in the BLM Kingman Resource Area Office to submit the location notice to that office, which he asserts he did. By a letter dated June 30, the Kingman Area Office advised him that the BLM State Office in Phoenix was the proper place for the recordation of his mining claim. When the notice of location finally reached BLM in Phoenix, it was late, but appellant contends that it was not his fault.

[1] Assuming appellant received the erroneous information as alleged, reliance upon such erroneous or incomplete information provided by a BLM employee cannot operate to vest any right not authorized by law, 43 CFR 1810.3(c).

[2] The fact that appellant may not have been aware of the recordation requirement of FLPMA, nor of the proper BLM office for such recordation, while unfortunate, does not excuse him from compliance. Those who deal with the Government are presumed to have knowledge of the law and the regulations duly promulgated and adopted pursuant thereto.

Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978); 44 U.S.C. §§ 1507, 1510 (1976). The responsibility for complying with the recordation requirements rested with appellant. This Board has no authority to excuse lack of compliance. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[3, 4] Section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the BLM office designated by the Secretary of the Interior within 90 days after the date of location. The pertinent regulation, 43 CFR 3833.1-2(b), replicates the statutory language, and states that "file" shall mean "being received and date stamped by the proper BLM office." Failure to file timely is considered conclusively to constitute abandonment of the claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4. See Omco, Inc., 55 IBLA 77, 79 (1981).

The Board has repeatedly held that a mining claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Johnnie Finnegan, 48 IBLA 79 (1980); Everett Yount, 46 IBLA 74 (1980); Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979). Filing is accomplished only when a document is delivered to and date stamped by the proper BLM office. 43 CFR 3833.1-2(a). Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

The notice of location for the Tanis One claim was not received timely by BLM. This Board has no authority to excuse a late filing. Lynn Keith, supra. Appellant should confer with BLM about the possibility of relocating the claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

Bruce R. Harris  
Administrative Judge

